IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 9 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHIEF SECRETARY & 1 - Appellant(s)

Versus

SURESH MOHANLAL & 1 - Defendant(s)

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Appearance :

MR YN RAVANI for Appellant(s) : 1 - 2.MR SHAKEEL A QURESHI for Appellant(s) : 1,
MR JR NANAVATI for Defendant(s) : 1, 1.2.1, 1.2.2,1.2.3 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 15/12/2005

ORAL JUDGMENT

This First Appeal arises out of the judgment and award rendered by the learned Workmen's Compensation Commissioner, Porbandar in W.C. Case No.4 of 1983 rendered on 19/12/1983. The appeal is preferred under Section 30 of the Workmen's Compensation Act.

2. Nanthalal Mohanlal Darji, son of the respondent, who was working with appellant No.2 as a lineman, met with an accident and died thereafter on 22/1/1983. The respondents therefore, gave a notice claiming compensation from the appellants on 26/2/1983, as no compensation was paid. There being no response, the respondents preferred W.C. Claim Application No.4 of 1983 on 2/4/1983. The application was opposed to by the appellants by filing reply at Exh.8, contending interalia, that the deceased was working purely as daily wager @ Rs.8.25 Paise per day and, was a casual labourer. It was also contended that the deceased died due to cardio respiratory failure as a result of shock, as per the postmortem report. It was contended in the written statement that the application was received on 26/2/1983 by Divisional Engineer, Junagadh and is under scrutiny and, if compensation is found to be legally due, the same would be paid.

2.1 Learned W.C. Commissioner, after considering rival side case and evidence led before him passed the impugned award, directing the appellants to pay a sum of Rs.18,000/- by way of compensation and also to pay an amount of Rs.9,000/- by way of penalty being 50% of

the amount of compensation. Learned Commissioner also directed the appellants to pay interest on the said amount @ 6% per month from the date of application till realization.

3. Being aggrieved by the said judgment and award, original opponents have preferred this appeal, challenging the award of penalty, being 50% of the amount of compensation.

4. Learned standing Counsel for Union of India, Mr.Qureshi, appearing for the appellant submitted that the learned W.C. Commissioner has erred in not appreciating the stand taken by the appellant before him on aspect of delayed payment of compensation for want of sanction. Mr.Qureshi, submitted that appellants are Government Departments and they have to follow certain procedure and in following that procedure time is consumed. This procedural delay ought to have been taken into consideration by the learned W.C. Commissioner and penalty ought not to have been imposed. Alternatively, Mr.Qureshi, submitted that the penalty imposed is the highest prescribed by law, which is too harsh and, therefore, may be reduced, as deemed

proper by the Court. He submitted that the appeal, therefore, may be allowed.

5. Learned Advocate, Ms.Trusha Mehta submitted that the challenge to the award is only in respect of imposition of penalty. She submitted that the death occurred on 22/1/1983 and amount of Rs.18,000/- was deposited on 17/11/1983, during pendency of the claim application before the learned W.C. Commissioner. She submitted that in light of Section 4 (A), learned Commissioner having found no justification for the delay and has used his discretion and imposed penalty. There is nothing to show that the discretion used arbitrarily or capriciously. There is nothing to show that the discretion is not used in a judicial manner and therefore, this Court may not interfere with the judgment and award.

5.1 Ms.Mehta submitted that in light of proviso to Section 30 of the Workmen's Compensation Act, this appeal can be entertained only, if a substantial question of law arises for determination by this Court and no such question is indicated by the appellants or their Counsel and, therefore, also, the appeal may not

be entertained.

6.Ms.Mehta, has placed reliance on the following judgments. She submitted that the appeal may be dismissed.

1)1999 G.C.D. 112 in the matter of R.C.Maheshwary Vs. Gujarat Public Service Commission & Anr.

2) **1976 (1) S.C.C. 289 in the matter of Pratap Narain Singh Deo Vs. Srinivas Sabata And Another**.

7.At the outset, it may be noted that the appeal must fail only on ground of want of substantial question of law calling for determination by this Court. No such question is raised in the memo of appeal or formulated in the memo of appeal. No such question is even argued by learned Counsel for the appellants and, no such question appears to arise for determination by this Court and, therefore, in light of proviso to Section 30 of the Workmen's Compensation Act, the appeal must fail.

8.However, since the appeal is admitted and is pending since 1985, this Court deems it proper to examine the merits on factual aspects also.

9.Undisputedly, the accident occurred on 22/1/1983 resulting in cardio-respiratory failure of deceased employee – Nathalal Mohanlal Darji. The amount of compensation therefore, became due from that day. Undisputedly, the amount of compensation is deposited on 17/11/1983 during the pendency of the W.C. Claim Application. During this period, on 26/2/1983 the respondents gave a notice to the appellants claiming compensation for death of their son, to which no heed was paid. Even, provisional amount of compensation was also not paid by the appellants after receiving notice. Ultimately, the respondents were dragged into filing of Workmen's Compensation Claim Application on 2/4/1983. The summons appears to have been served on 30/4/1983 upon the appellants and written statement was filed on 13/5/1983. Thereafter, also, no action is taken till 17/11/1983 when the amount is deposited. The law contemplates deposits of amount within period of one month from the date it becomes due and, therefore, learned W.C. Commissioner was justified in awarding penalty. Certainly, discretion can be used while deciding quantum of penalty, if some justification is shown. It appears that the delay was sought to be justified or explained by taking a stand that time was

consumed in obtaining sanction. But, as conceded to by learned standing Counsel for appellant, the amount of Rs.18,000/- deposited on 17/11/1983, was deposited in absence of sanction. Therefore, want of sanction cannot be considered as a valid reason for non-deposit of compensation within time stipulated by the W. C. Act. Learned W.C. Commissioner has taken into consideration these aspects and has come to a conclusion that this is a false defence taken by the appellants and has used his discretion by imposing penalty @ 50% of the amount of compensation. This Court, finds that learned Commissioner appropriately dealt with the material on record while considering the question and has used his discretion judiciously. There is nothing to read or infer any arbitrariness in use of discretion. Therefore, on merits also, this Court, finds no reason to interfere with the award, so far as it relates to imposition of penalty.

10. However, though, it is not contended in the memo of appeal nor canvassed during the course of argument, it is noticed that learned W. C. Commissioner has awarded interest @ 6% per month from the date of application till realization. The interest is awarded in light of

provisions contained in Section 4 (A) sub-section 3 which provides grant of interest @ 6% per annum and, therefore, the learned W.C. Commissioner appears to have committed an error in awarding interest @ 6% per month. The award would stand modified only to the extent that the interest would be payable per annum and not per month. Subject to the above modifications, the appeal stands disposed of as dismissed. There shall be no order as to costs.

(A.L.DAVE, J.)

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